

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

**BRIEF AND APPENDIX
FOR APPELLANT**

FILED SEP 8 - 1942

IN THE

Joseph W. Bastian

CLERK

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

No. 8317

AMALGAMATED CASUALTY INSURANCE CO.,
A CORPORATION, *Appellant,*

v.

GENEVA WINSLOW, AN INFANT, BY MARGARET
WINSLOW, HER MOTHER AND NEXT FRIEND,
Appellee.

Appeal from the District Court of the United States for the
District of Columbia

WALTER M. BASTIAN,
PETER N. CHUMBRIS,
Attorneys for Appellant.

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 8317

AMALGAMATED CASUALTY INSURANCE COM-
PANY, A CORPORATION, *Appellant,*

v.

GENEVA WINSLOW, AN INFANT, BY MARGARET
WINSLOW, HER MOTHER AND NEXT FRIEND,
Appellee.

BRIEF FOR APPELLANT.

JURISDICTIONAL STATEMENT.

This is an appeal from a judgment of the District Court of the United States for the District of Columbia rendered against the appellant. There was no important issue of fact involved and the decision of the Court below was based on a question of law. A judgment of Five Hundred Dollars (\$500.00) plus costs and interest by default was rendered in favor of the appellee, and against Fred Elliott, the insured, on the 9th day of September, 1941, in the Municipal Court of the District of Columbia. This judgment was doc-

keted in the District Court of the United States for the District of Columbia on January 17, 1942. (Appellant's App. p. 2.) A motion for summary judgment against two insurance companies (garnishees) was filed on April 28, 1942, (Appellant's App. 3-4). This motion was granted by the Court on the 4th day of June, 1942 (Appellant's App. 8.) From this judgment appellant has seasonably appealed (Appellant's App. 9.)

STATEMENT OF CASE.

The facts in the case are fairly stated in the findings of fact (Appellant's App. 6-7), and accordingly purely a question of law is for determination. The facts set forth in appellant's affidavit in opposition to the motion for summary judgment, which facts, under well established rules, must be considered as true for the purposes of the motion, may be briefly summarized as follows (Appellant's App. 4-5):

A judgment for Five Hundred Dollars (\$500.00) with costs was rendered in favor of the appellee, Winslow, against Fred Elliott, the insured, on the 9th day of September, 1941, in the Municipal Court of the District of Columbia. The basis of the judgment was an injury allegedly sustained by the operation by Elliott of a taxi driven by him on October 30, 1940. Elliott, a taxicab driver, carried an automobile policy (No. 300) and certificate of insurance, effective 12.01 a. m. June 16, 1940, with the Amalgamated Casualty Insurance Company, Inc. (the appellant), admittedly a solvent company, which certificate of insurance was filed on June 17, 1940, with the Public Utilities Commission for the District of Columbia under the provisions of the compulsory insurance act (D. C. Code, 1940, Title 44, Sec. 301). Elliott agreed to make weekly payments of premiums on the said insurance and continued to make such payments to October 5, 1940; effective October 6, 1940, Elliott discontinued his insurance with the Amalgamated Casualty Insurance Company, Inc. and insured with the Pennsylvania Casualty Company, also admittedly a solvent company, the

latter company filing its certificate of insurance in the name of Fred Elliott on the same automobile, being their policy number 1236; said policy 1236 became effective 12.01 a. m. October 6, 1940, and remained in full force and effect until February 7, 1942, when a notice of cancellation was filed by said Pennsylvania Casualty Company. Due to the fact that new insurance was written by the Pennsylvania Casualty Company, the Amalgamated Casualty Insurance Company, Inc. did not immediately file any notice of cancellation, although out of an abundance of caution notice of cancellation dated October 30, 1940, was filed. It further appears that the Amalgamated Casualty Insurance Company, Inc. was not paid for the insurance after October 5, 1940; but on the other hand Pennsylvania Casualty Company did receive compensation for such insurance from the effective date of its policy until the date of cancellation, namely February 7, 1942. (Appellant's App. p. 5)

Under the rules of the Public Utilities Commission the company making the last filing of a certificate of insurance is considered the proper carrier of insurance on the insured.

After the rendition of the judgment and on January 17, 1942, the judgment obtained in the Municipal Court was certified to the District Court of the United States for the District of Columbia. Thereupon garnishments were issued by appellee against both insurance companies, and thereafter appellee filed a motion for summary judgment against the Amalgamated Casualty Insurance Co. Inc. and the Pennsylvania Casualty Company. Answers were duly filed by both companies, garnishees, and under late of June 4, 1942, the Court entered its findings of fact, conclusions of law and final judgment, giving judgment against both garnishee insurance companies, and directing that if one garnishee paid more than one-half of the judgment with interest and costs it should recover from the other garnishee all sums paid over and above one-half of the judgment. Thereupon this appellant seasonably filed its appeal.

STATUTES INVOLVED.

D. C. Code 1940, Title 44, Sec. 301:

“* * * Any such policy of liability insurance shall be issued only by such insurance companies as may have been authorized to do business in the District of Columbia, and any such bond or undertaking shall be secured by a corporate surety approved by the Superintendent of Insurance of the District of Columbia. The Superintendent of Insurance of the District of Columbia shall be empowered to make all reasonable rules and regulations relating to the writing of taxicab insurance and shall be empowered to govern the maximum rates to be charged on such insurance. No such bond or policy of insurance may be canceled unless not less than twenty days prior to such cancellation or termination notice of intention so to do has been filed in writing with the Commission unless cancelation is for nonpayment of premiums, in which event five days' notice as above provided shall be given. It shall be unlawful to operate any vehicle subject to the provisions of this paragraph unless such vehicle shall be covered by an approved bond or policy of liability insurance as provided herein. The Public Utilities Commission shall have the power to make all reasonable rules and regulations which, in its opinion, are necessary to make effective the purposes of this section. * * *”

STATEMENT OF POINTS.

1. The appellant was not required under the circumstances of the case to give notice of cancellation of its policy of insurance under Title 44, Section 301, of the D. C. Code, 1940. (Points 3, 4, Appellants App. 9-10.)

2. Because the insured procured a new policy of insurance in a responsible company effective as of the date when the policy with appellant expired by the voluntary act of the insured, the Court erred in sustaining the motion for summary judgment as against the Amalgamated Casualty Insurance Company (Points 1, 2, 5, 6, Appellant's App. 9-10).

These points will be argued together.

SUMMARY OF ARGUMENT.

The appellant, an insurance company, insured the defendant, Elliott, under the provisions of the Compulsory Insurance Law governing taxicabs in the District of Columbia (Title 44, Section 301, D. C. Code, 1940). The insurance expired on October 6, 1940 when the insured took out a new policy of casualty insurance with the Pennsylvania Casualty Company effective as of date of the expiration of the policy with the appellant. The accident in question happened after Pennsylvania Casualty Company policy became effective, but before a formal notice of cancellation was given by appellant. The insured having given a policy of insurance with a concededly responsible company, the new company is responsible for the damage to appellee; and appellant is relieved from responsibility by the giving of new policy of insurance for the reason that the requirement of a notice of cancellation is for the protection of the appellee and others similarly situated.

ARGUMENT.

In deciding the case the Court apparently took the narrow view that the Compulsory Insurance Law should be literally construed, a view which appellant contends does not properly take into consideration the obvious purposes for which the pertinent provision was intended. It is obvious that the purpose of the provision was to protect the public against uninsured owners and to provide an adequate time to protect the public, thus, if for any reason the insurance company desired to leave the risk, notice of that intention must be filed. (D. C. Code, 1940, Title 44, Sec. 301, *supra*). If the reason be nonpayment of premium a five-days' notice must be given. (*Id.*)

In the instant case the risk was voluntarily abandoned by the insured for reasons best known to himself; the new company wrote the insurance presumably because it wanted the risk and was willing, for a consideration, namely the pre-

mium, to assume the chance of liability—in all of the change, the appellant was a non-active party; and yet in face of full protection to the public, including appellee, which the insured paid the new company to obtain, the appellant, which received no compensation, is to be penalized. No reason exists for such a holding. Concededly, if no new policy were written, or if written, was in a company which had no financial responsibility, the old company would remain liable, but here we have not only a new policy but one in a responsible company, or as stated in *Automobile Insurance Co. of Hartford, Conn. v. Southern Transportation Co.*, 101 S. W. (2) 585, 588, *infra*:

“It is elementary that the provision specifying a given number of days for the cancellation of insurance contracts may be waived by the parties, provided, in cases of this kind, where the public has an interest, the cancelled policy is immediately substituted by a similar policy of a solvent and reliable insurance company. This seems to be the settled rule of law, and is followed in this State.”

If the owner, notwithstanding the lapsing of his insurance through failure to pay the premium or otherwise, continues to drive and a person is injured within the period fixed in the cancellation notice, of course the insurance company remains liable. The cancellation period gives the Public Utilities Commission an opportunity to determine whether or not the cab is being put into use. The use of the cab is prohibited if new insurance is not written. However, the reason for the giving of the notice fails when an insured simply changes from one insurance company to another and notice to the Public Utilities Commission is given of the new insurance, as was done in this case (Appellant's App. 4). It is hard to see the equity or reason or justice of a rule which would hold the old insurance company responsible for an accident happening during a time when it received no premium and reward the new company which received the entire premium by permitting that new com-

pany to share its losses with the company which it has succeeded.

Further, the filing of the certificate of insurance by the new company was in effect a notice of cancellation of the old policy, because it is inconceivable that the insured would have two policies in effect.

Precisely analogous cases have been found which recognize the rule contended for by appellant, where similar statutes or regulations provide for the giving of notice of cancellation. We shall briefly summarize these cases.

In Gratopp v. Carde Stamping & Tooling Company, 216 Mich. 355, 185 N. W. 675, construing a Workmen's Compensation Act, which contained a provision as to notice being given in event of cancellation and where two insurance companies were involved as they were in this case, the Court at page 357 (of the Michigan report) cited the Statute involved:

"Sec. 1, part 4, article no. 64, Public Acts 1919. That it will file with the Industrial Board at Lansing, Michigan, at least ten days before the taking effect of any termination a cancellation of this contract or policy, a notice giving the date at which it is proposed to terminate or cancel this contract or policy; and that any termination of this policy shall not be effective as far as the employees of the insured covered are concerned until ten days after such notice of such proposed termination or cancellation is received by the said Industrial Accident Board."

and said:

"It is because of this section that counsel for the General Accident (Insurance Company) seek to place the liability for the accidents upon the Employers (Insurance Company). This provision is for the benefit of the employee by affording time to an employer to procure other insurance to replace that cancelled. It will not be construed to hold a company which has cancelled its policy where the employer has permitted no lapse, but has at once provided another insurer, as was done here. The General Accident was on the risk dur-

ing the time in question. It accepted the premium. It filed its acceptance with the board, it should pay.” (Words in parentheses supplied.)

In *Eurich v. General Casualty Co.*, 152 Md. 209, 136 Atl. 546, the facts were briefly these:

General Surety and Casualty Company on August 13, 1924, issued a workmen's compensation policy to the employer. Notice of cancellation of said policy was given to the Compensation Commission but was not to be effective until January 8, 1925. On December 13, 1924, a new workmen's compensation policy was issued by the Georgia Casualty Company. The employee was killed on the 25th of December, 1924. The Maryland Court held that the General Casualty and Surety Company, although the cancellation was not effective until January 8, 1925, under the Statute, was not responsible. The reasoning of the Court was that since there was a surety to protect the employee, the ten-day period of notification of cancellation of policy was not necessary. Quoting from page 214 (of the Maryland Report) in the above case:

“In *Gratopp v. Carde Stamping & Tooling Co.* 216 Mich 355, the Supreme Court of Michigan in discussing a similar provision of the Workmen's Compensation statute of that state said: ‘It will not be construed to hold a company which has cancelled its policy, where the employer has permitted no lapse, but has at once provided another insurer’.”

“In supplement 3 to R. C. L., page 329, it is said: ‘That mischief sought to be remedied by an act requiring notice of cancellation is that resulting from terminating the policy without according the insured ample time within which to negotiate for other insurance in its stead. *Warren v. Franklin Fire Ins. Co.* 161 Iowa, 640’.”

In three other cases under the same factual situation and involving an analogous statute as to notice of cancellation of a policy, the rule is followed as in the above cases and as contended for by appellant:

Michigan Mutual Liability Co. v. Baker et al, 294 N. W. 168, 295 Mich. 237. Quoting from page 243 (of the Michigan Report)

“The facts before us are unique in that there will be some insurer against which an award may be entered after cancellation of plaintiff’s certificate, for it would seem that the State Accident Fund remains liable during the period from October 21 to 31, *unless some valid insurer’s acceptance is filed with the department in the interim.* . . . We do not say here that relief will be granted where the result will be to leave workmen completely unprotected between the time the policy is issued and the effective date of cancellation. A court of equity will not depart from equitable principles.” (Italics supplied.)

Automobile Insurance Co. of Hartford, Conn. et al., v. Southern Transportation Co. et al., 101 S. W. (2) 585 (Texas). Quoting from page 588:

“But, inquires the Automobile Ins. Co., what about the rule of the Railway Commission requiring 30 days’ notice before an existing policy can be cancelled. Manifestly, this rule was promulgated in order to make certain the requirement of said Section 13 that there must be at all times an unbroken carriage. . . . It is elementary that the provision specifying a given number of days for the cancellation of insurance contracts may be waived by the parties, provided, in cases of this kind, where the public has an interest, the cancelled policy is immediately substituted by a similar policy of a solvent and reliable insurance company. This seems to be the settled rule of law, and is followed in this State.”

Zakrzewski v. American Box Board Co., 239 N. W. 336, 256 Mich. 26. Quoting from page 27 (of the Michigan Report):

“The contest arises out of the mistaken view of the secretary of the department, as expressed in his letter, that Statute 2 Comp. Laws 1929 sec. 8460 provided that the insurance company carrying the risk must file no-

tice of termination or cancellation with the department at least ten days before taking effect. This is for the protection of employees and to enable the employer to obtain other insurance, but is wholly unnecessary when the employer actually changes the carrier of risk, so notifies the department and the new carrier files its certificate of coverage. The authority of the insurance company to assume such coverage is determined by the commissioner of insurance."

CONCLUSION.

For the reasons above given and in view of the authorities cited, it is respectfully submitted that the judgment appealed from was erroneous and should be reversed.

Respectfully submitted,

WALTER M. BASTIAN,
PETER N. CHUMBRIS,
Attorneys for Appellant.

APPENDIX

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

No. 8317

AMALGAMATED CASUALTY INSURANCE CO.,
A CORPORATION, *Appellant*,

v.

GENEVA WINSLOW, AN INFANT, BY MARGARET
WINSLOW, HER MOTHER AND NEXT FRIEND,
Appellee.

APPENDIX TO BRIEF FOR APPELLANT.

**PLEADINGS, DOCKET ENTRIES AND OTHER PAPERS
DESIGNATED BY APPELLANT.**

1 Endorsed: Filed Jan 17 1942 Charles E. Stewart,
Clerk.

Certified Copy of a Judgment

To be filed in the office of the Clerk of the District Court of the United States for the District of Columbia, to become a Lien upon land.

In the Municipal Court of the District of Columbia

No. A-15,757

GENEVA WINSLOW, an infant, by MARGARET WINSLOW, her mother and next friend, *Plaintiff*,

v.

FRED ELLIOTT, *Defendant*.

Without prepayment of costs.

Date

1940

Proceedings

Attorneys for plaintiff—Samuel B. Brown and M. Taft Woodruff.

Attorney for defendant—None of record.

Dec. 16 Complaint for personal injuries sustained by pedestrian and bill of particulars filed.

Dec. 16 Summons and copy issued; returnable January 8, 1941, at 10 A. M.

1941

Jan. 13 Summons and copy returned "Defendant not to be found."

May 22 Appearance of Samuel B. Brown as attorney for plaintiff entered per order filed.

May 22 Alias summons and copy issued; returnable June 6, 1941, at 10 A. M.

June 5 Alias summons returned "Served."

June 6 Continued to June 20, 1941 by the plaintiff.
 June 20 Continued to June 27, 1941 by the plaintiff.
 Sep. 9 Affidavit in compliance with Soldiers and Sailors
 Civil Relief Act of 1940, filed.
 Sep. 9 Judgment for plaintiff, ex parte proof, for
 \$500.00, with interest from September 9, 1941,
 and costs.

Minutes 134. Page 147. Judge Aukam.

December 4, 1941 Execution issued to the United States
 Marshal for said District of Columbia, who, on the 4th day
 of December, 1941 returned the same "No personal prop-
 erty found whereon to levy."

THIS IS TO CERTIFY that the foregoing is a true copy
 of the judgment and proceedings in the above-entitled cause.

WITNESS, the Honorable Judge of said Court, this 4th
 day of December, A. D. 1941.

Costs to be paid by Plaintiff,	\$8.25**
Costs paid by Defendant,	\$None

BLANCHE NEFF,
Clerk.

* * * * *

14 Endorsed: Filed Apr 30 1942 Charles E. Stewart,
 Clerk

Motion for Summary Judgment

Comes now the plaintiff by and through her attorneys and
 moves the Court for Summary Judgment against the gar-
 nishees, Amalgamated Casualty Insurance Co., a corpora-
 tion and Pennsylvania Casualty Co. Inc., a corporation, on
 the ground that the pleadings and admissions on file in this
 action show that there is no genuine issue as to any mate-

** Case filed without prepayment of costs.

rial fact, and none of the defenses set forth in the Answers to the garnishments filed herein are sufficient in law.

SAMUEL B. BROWN

NATHAN M. BROWN

Attorneys for Plaintiff

514 Colorado Building

Washington, D. C.

Granted 5-21-42 Adkins J

* * * * *

15 Endorsed: Filed May 15 1942 Charles E. Stewart,
Clerk

Affidavit in Opposition to Motion for Judgment

DISTRICT OF COLUMBIA, ss:

Jack Dolton, being first duly sworn, on oath says that he is the President of the Amalgamated Casualty Insurance Company against whom the motion for judgment was filed in the above cause.

Your affiant avers that on June 16, 1940, they insured the defendant, Fred Elliott, under the provisions of Title 24, Chapter 3, Section 1 of the D. C. Code (1940), filing certificate of insurance in the name of said Fred Elliott, policy No. 300 covering 1940 Chevrolet, engine number 2915325, to become effective 12:01 a.m. June 16, 1940; that the said Fred Elliott agreed to make weekly payments on the said insurance and continued to make payment on said insurance to October 5, 1940; that effective October 6, 1940, said Fred Elliott discontinued his insurance with the Amalgamated Casualty Insurance Company and insured with the Pennsylvania Casualty Company, they filing certificate of insurance in the name of said Fred Elliott on the same automobile being their policy 1236; that said policy 1236 remained in full force and effect from 12:01 a.m. October 6, 1940 to February 7, 1942, when a notice of cancellation was filed by said Pennsylvania Casualty Company.

That due to the fact that new insurance was written by the Pennsylvania Casualty Company it was not necessary that the said Amalgamated Casualty Insurance Company file immediately any notice of cancellation, although out of an abundance of caution notice of cancellation dated 16 October 30, 1940, effective November 4, 1940, was filed; that the said Amalgamated Casualty Insurance Company was not paid for said insurance after October 5, 1940; the Pennsylvania Casualty Company did receive compensation for such insurance from that day on until date of cancellation and was the real insurer of the defendant at the time of the happening of the accident in question. Under the rules of the Public Utilities Commission the company making the last filing of a certificate of insurance is considered the proper carrier of insurance on the insured; because of such rules and because of the fact that the policy issued by the Amalgamated Casualty Insurance Company was not renewed and a new policy was written in another company, to wit, Pennsylvania Casualty Company, the motion for summary judgment should not be granted against this defendant.

JACK DOLTON.

Subscribed and sworn to before me this 15th day of May, 1942.

WILLIAM F. HEWES,
Notary Public, D. C.

* * * * *

17 Endorsed: Filed June 4 - 1942 Charles E. Stewart,
Clerk

Findings of Fact and Conclusions of Law

This cause was heard on plaintiff's motion for summary judgment against the garnishees, Pennsylvania Casualty Co., a corporation, and Amalgamated Casualty Insurance Co., a corporation, and it appearing to the Court that there is no genuine issue of fact involved, the Court hereby makes the following findings of fact and conclusions of law:

Findings of Fact

1. Plaintiff recovered a judgment against the defendant, Fred Elliott, in the Municipal Court of the District of Columbia on a finding made by said Court in the sum of Five Hundred Dollars (\$500.00) with interest thereon from September 9, 1941, together with costs, as a result of personal injuries she sustained by reason of the negligence of the defendant in the operation of his taxicab in the District of Columbia on October 30, 1940.

2. Thereafter plaintiff docketed said judgment in this Court and caused attachments and garnishments to issue directed to the garnishees, Pennsylvania Casualty Company and the Amalgamated Casualty Insurance Company.

3. Garnishee, Pennsylvania Casualty Company, admitted issuing to the defendant its policy of liability insurance on October 6, 1940, under the provisions of the Compulsory Insurance Act, and that it had same on file with the Public

18 Utilities Commission of the District of Columbia covering the liability of the defendant as the owner and operator of the taxicab in question. It further admitted that it executed and required forms of endorsement as set forth on the request for admissions filed by the plaintiff herein under rule of Court and that said policy of insurance and endorsement were in full force and effect on October 30, 1940. It further admitted that it was paid premiums on said insurance covering the time when the accident in question happened.

4. Garnishee, Amalgamated Casualty Insurance Company, admitted issuing its policy of liability insurance to the defendant effective June 16, 1940, under the provisions of the Compulsory insurance Act, and that it filed the required form of endorsement on the Public Utilities Commission of the District of Columbia on June 17, 1940, covering the vehicle involved herein. It admitted further that said policy remained in full force and effect until October 6, 1940, on which date the defendant, Fred Elliott, wrote his insurance in the garnishee, Pennsylvania Casualty Company, and

ceased to pay his premiums to the Amalgamated Casualty Insurance Company, but that it did not notify the Public Utilities Commission of the cancellation of said policy until October 30, 1940.

5. That both companies are conceded to be financially capable of paying the judgment.

6. That it is conceded that the Court in this proceeding shall have the right to fix the rights of all parties in this matter as between each other.

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Conclusions of Law

1. That said judgment is a judgment of this Court having been duly docketed herein.

2. That both garnishees had policies of insurance in full force and effect on October 30, 1940 covering the liability of the defendant, Fred Elliott, in the operation of his taxicab.

3. That Amalgamated Casualty Insurance Company is estopped to assert its cancellation against the plaintiff herein.

4. That plaintiff is entitled to a judgment of recovery against both insurance carriers for the amount of her judgment in the sum of \$500.00 with interest from September 9, 1941, and costs; and that the insurance carrier paying the judgment shall recover of the other insurance carrier one-half of the amount so paid.

JESSE C. ADKINS

Justice

Date: June 4, 1942

Approved as to form only:

W. A. BASTIAN

Atty for Amal Cas Ins Co

NATHAN M. BROWN

Atty for Pltff.

JUSTIN L. EDGERTON,

Atty for Pennsylvania Casualty Co.

* * * * *

20 Endorsed: Filed Jun 4 - 1942 Charles E. Stewart,
 Clerk

Judgment

This action came on for hearing before the Court on plaintiff's motion for summary judgment, and the Court having made its findings of fact and conclusions of law, it is hereby

Adjudged, that plaintiff be and she is hereby awarded judgment of recovery against the garnishees, Amalgamated Casualty Insurance Company, a corporation and the Pennsylvania Casualty Insurance Company, a corporation, in the sum of Five Hundred Dollars (\$500.00) with interest at 6% from September 9, 1941, plus all court costs; and that if either garnishee pays more than one-half of the judgment, with interest and costs, it shall recover of the other garnishee all sums paid over and above one-half of the judgment herein granted.

June 4, 1942

JESSE C. ADKINS

Justice

Seen:

NATHAN M. BROWN

Attorney for Plaintiff

W. M. BASTIAN

*Attorney for Amalgamated
Casualty Insurance Company*

JUSTIN L. EDGERTON

*Attorney for Pennsylvania
Casualty Insurance Company*

21 Endorsed: Filed Jun 12 1942 Charles E. Stewart,
Clerk

In the District Court of the United States
For the District of Columbia

M. C. 7579

MARGARET CECILIA WINSLOW, *Plaintiff*,

v.

AMALGAMATED CASUALTY INSURANCE COMPANY, ET AL.,
Defendants.

Notice of Appeal

Notice is hereby given this 12th day of June, 1942, that Amalgamated Casualty Insurance Company, a corporation, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 4th day of June, 1942 in favor of Margaret Cecilia Winslow against said Amalgamated Casualty Insurance Company.

WALTER M. BASTIAN

Attorney for

Amalgamated Casualty Ins. Co.

* * * * * * * * *

22 Endorsed: Filed Jun 23 1942 Charles E. Stewart,
Clerk

*Statement of Points on Which Defendant (Garnishee)
Amalgamated Casualty Insurance Company Intends to
Rely on Appeal*

1. The Court erred in sustaining the motion for summary judgment as against the Amalgamated Casualty Insurance Company.

2. The Court erred in not overruling the motion for summary judgment as against the Garnishee, Amalgamated Casualty Insurance Company.

3. The Court erred in holding, in effect, that, under the circumstances of this case as disclosed by the record it was necessary for the garnishee, Amalgamated Casualty Insurance Company, to give notice of cancellation of its policy.

4. The Court erred in finding for the plaintiff against garnishee, Amalgamated Casualty Insurance Company, the sum of \$500.00 plus interest and costs.

5. The Court erred in finding that if either garnishee pays more than one-half of the judgment with interest and costs, it shall recover of the other garnishee all sums paid over and above one half of the judgment herein granted.

6. The conclusion of the Court is contrary to the law applicable to the case.

WALTER M. BASTIAN

PETER N. CHUMBRIS

National Press Building
*Attorneys for Garnishee,
Amalgamated Casualty
Insurance Company.*

OFFICE COPY
BRIEF AND APPENDIX
FOR APPELLEE

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

UNITED STATES
COURT OF APPEALS
DISTRICT OF COLUMBIA

No. 8317 FILED NOV 16 1942

AMALGAMATED CASUALTY INSURANCE CO.,
A CORPORATION, *Appellant,*

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BENJAMIN B. BROWN,
Attorneys for Appellee.

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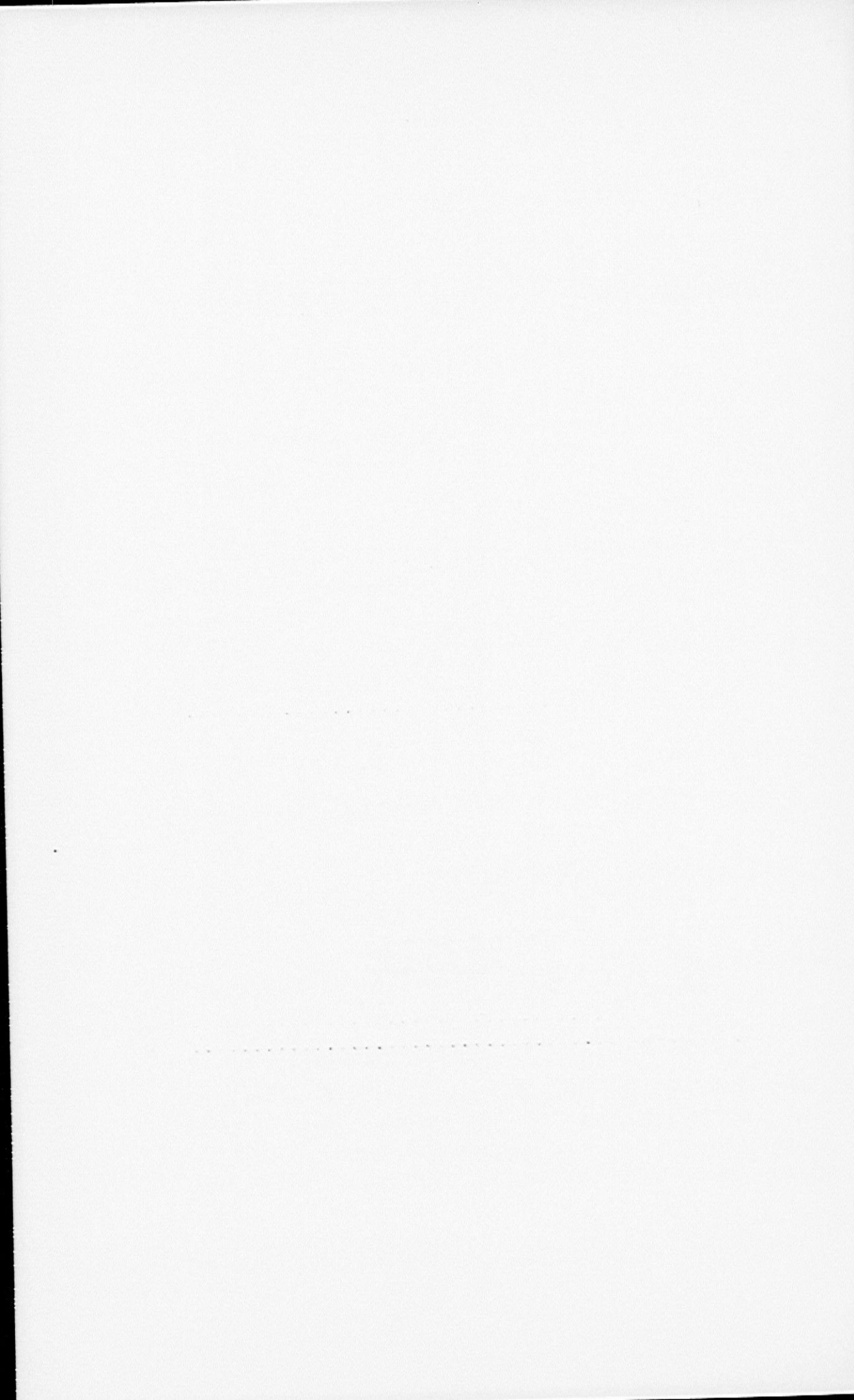
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Appeal from the District Court of the United States for the
District of Columbia.

BRIEF FOR APPELLEE.

COUNTER STATEMENT OF THE CASE.

The facts in this case are fairly presented in the Brief of the Appellant except that the record printed in Appellant's Appendix omits the Requests for Admission of facts which were submitted to the Appellant under Rule 36 of the

Federal Rules of Civil Procedure and which were admitted by failure of Appellant to answer. The request for admission of facts are printed in Appellee's Appendix (Appellee's App. 4, 7). Also, there is nothing in the record nor is it a fact that under the rules of the Public Utilities Commission the company making the last filing of a Certificate of Insurance is considered the proper carrier of insurance on the insured.

STATUTE AND RULE INVOLVED.

Rule 36 of the Federal Rules of Civil Procedure:

"* * * at any time after the pleadings are closed, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth therein. Copies of the documents shall be delivered with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than ten days after service thereof or within such further time as the Court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters."

D. C. Code 1940, Title 44, Section 301 set forth in Appellant's Brief.

"The Public Utilities Commission of the District of Columbia is hereby directed to require any and all corporations, companies, associations, joint-stock companies or associations, partnerships, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, operating, controlling, managing, or renting any passenger motor vehicles for hire in the District of Columbia, except as to operations licensed un-

der paragraph (b) of section 44-2351, and except such common carriers as have been expressly exempted from the jurisdiction of the Commission, to file with the Commission for each motor vehicle to be operated a bond or bonds, policy or policies of liability insurance or certificate or insurance in lieu thereof in a solvent and responsible surety or insurance company authorized to do business in the District of Columbia, conditioned for the payment to any person of any judgment recovered against such corporations, companies, associations, joint-stock companies or associations, partnerships, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, or renters of their cabs, for death or for injury to any person or injury to any property, or both, caused in the operation, maintenance, use, or by reason of the defective construction of such motor cabs or other vehicles. Any such bond or undertaking or policy of liability insurance shall be in such form and on such terms or conditions as the Commission may direct: *Provided*, That such bond or policy may limit the liability of the surety or insurer on any one judgment to \$5,000 for bodily injuries or death and \$1,000 for damage to or destruction of property, and all judgments recovered upon claims arising out of the same subject of action to \$10,000 for bodily injuries or death and \$1,000 for damages to or destruction of property, to be apportioned ratably among the judgment creditors according to the amount of their respective judgments. Any such policy of liability insurance shall be issued only by such insurance companies as may have been authorized to do business in the District of Columbia, and any such bond or undertaking shall be secured by a corporate surety approved by the Superintendent of Insurance of the District of Columbia. The Superintendent of Insurance of the District of Columbia shall be empowered to make all reasonable rules and regulations relating to the writing of taxicab insurance and shall be empowered to govern the maximum rates to be charged on such insurance. No such bond or policy of insurance may be canceled unless not less than twenty days prior to such cancellation or termination notice of intention so to do has been filed in writing with the Com-

mission unless cancellation is for nonpayment of premiums, in which event five days' notice as above provided shall be given. It shall be unlawful to operate any vehicle subject to the provisions of this paragraph unless such vehicle shall be covered by an approved bond or policy of liability insurance as provided herein. The Public Utilities Commission shall have the power to make all reasonable rules and regulations which, in its opinion, are necessary to make effective the purposes of this section.

"Any owner of a public vehicle required hereby to file a bond or policy of insurance may, in lieu thereof:

"(a) File with the Public Utilities Commission a blanket bond, or a blanket policy of liability insurance, in an amount to be approved by said Commission, but not to exceed \$75,000, conditioned as required by this chapter, and covering all vehicles lawfully displaying the trade name or identifying the design of any individual, association, company or corporation.

"(b) Create and maintain a sinking fund in such amount as the Public Utilities Commission may require, but not in excess of \$75,000, and deposit the same, in trust, for the payment of any judgment recovered against such owner, as provided in this chapter, with such person, official or corporation as said commission shall designate.

"*Provided*, That should any such owner elect to comply with the provisions of paragraphs (a) or (b) of this section, such owner shall first file with the Public Utilities Commission an admission of liability, in conformity with the principle of respondent [sic] superior for the tortious acts of the driver or drivers of such vehicle or vehicles aforesaid as shall be driven with the trade name or identifying design of such owner.

"Any cash or collateral deposit and/or any sinking fund herein provided for shall be exempt from attachment or levy for any obligation or liability of the depositor thereof, save as herein provided.

"Within the meaning of this paragraph, the word 'owner' shall include any corporation, company, association, joint-stock company or association, partnership or person, and the lessees, trustees or receivers appointed by any court whatsoever, permitting his,

their or its trade name and/or identifying design to be displayed upon vehicles governed by this section.

“Any violation of this section or of the regulations lawfully promulgated thereunder shall be deemed a misdemeanor and upon conviction shall be punishable by a fine of not more than \$300 or by imprisonment for not more than ninety days, and/or cancellation of license.

“This section shall become effective sixty days after final passage. (June 29, 1938, 52 Stat. 1233, ch. 809.)”

SUMMARY OF ARGUMENT.

I.

Compliance with Compulsory Insurance Statute of the District of Columbia is Mandatory and Should Be Strictly Construed.

II.

By Terms of Contract and Express Endorsement on the Policy, Carrier Obligated Itself to Give the Public Utilities Commission Notice in Writing of Its Intention to Cancel Policy, and Its Admitted Failure to do so Rendered it Liable to Appellant.

III.

Appellant is Estopped as Against the Appellee to Assert Non-Liability Under Circumstances of this Case.

ARGUMENT.

I and II.

In addition to the requirement of the statute for cancellation of the policies written thereunder, the Public Utilities Commission of the District of Columbia requires of the insurance carrier a Certificate of Insurance and Endorsement to be filed with it. By the terms of this Endorsement the carrier agrees to give twenty days notice in writing of its intention to cancel said policy. (Appellee's App. 5, 6, 7.) The cancellation provision embodied in the Code Section, *supra*, and in the Certificate of Insurance is plain, unequivocal and mandatory. An insurance company writes its own

policies, knows their contents, and has the ability and organization to protect itself. Its continued liability after the term of its policy was due to its own breach of an express provision of the statute and of its contract that it should file its notice of cancellation. Its failure to file the notice and thus terminate its liability was its own fault and in no way attributable to the Appellee. By the terms of the Compulsory Insurance Act, the policy was given a statutory life so that no private act or agreement could deprive the innocent third person of its protection. The fact that two policies were in force makes no difference. There is nothing in our Statute requiring but one company to carry the insurance.

Cases cited by Appellant involve workmen's compensation policies. Those cases were considered in the recent case of *Tri-State Casualty Company v. Speer*, 189 Okla. 191, 115 P. (2d) 130, decided June 24, 1941 by the Supreme Court of Oklahoma. That Court was not impressed with the argument that only one carrier was liable to an injured employee in view of the provisions of the Oklahoma Statute. Thus we find the Court saying on page 131 of the Pacific Reporter:

“* * * Tri-State calls attention to 71 C. J. 914; *Gratopp v. Carde Stamping & Tool Co.*, 216 Mich., 355, 185 N. W. 675; *Automobile Insurance Company v. Southern Transportation Company*, Tex. Civ. App., 101 S. W. (2d) 585; and *Eurich v. General Casualty and Surety Co.*, 152 Md. 209, 136 A. 546, as supporting the contention it makes in this case. We do not find these authorities in point because of the difference in the law and facts involved. The Michigan Statute construed in the *Gratopp* case which is more nearly in point, contemplated that an employer should insure all his risks in one insurance company, not two or more, and the Court held that if the employer had agreed to cancel one policy and had paid a premium to another company for a policy in lieu of the one cancelled, only the latter company should be held liable. Our Statute places no such restriction on the employer.”

III.

The Appellant seeks to escape liability under its Certificate of Insurance by reason of a notice of cancellation given on October 30, 1940, (the date of the accident) effective as of November 4, 1940. As a matter of law, it cannot escape liability to the appellee under its Certificate of Insurance on this ground.

The Insurance Certificates of both carriers were in full force and effect on the date of the accident, and accordingly both companies are liable to the appellee and are bound to contribute to the satisfaction of the judgment against the insured recovered by the Appellee. The absolute liability imposed on the insurance carrier by the required form of endorsement is comparable to the compulsory insurance required in several of the states respecting vehicles for hire. Under similar statutes of many of the states, notably Massachusetts, the Courts have gone so far as to hold that even though notice of cancellation of the required policy or indemnity has been given the insured and is effective under the policy as between the insured and insurance carrier, that as against third persons injured by the operation of the insured vehicle for hire that the carrier was nevertheless absolutely liable and was estopped to assert the defense of the cancellation of its policy. To this effect see *Greenberg v. Flaherty et al.* (Sup. Judicial Ct. of Mass., May 28, 1940) 27 N. E. 2d. 683, 129 A. L. R. 846, in which the carrier was held to be estopped to assert a policy defense against the assured by reason of cancellation of the policy, the notice of cancellation having been misdirected. To the same effect see *Paloeien v. Day*, 299 Mass., 586, 13 N. E. 2d. 398. In *Sills v. Schneider*, 197 Wash. 659, 86 P. 2d. 203, the Court held the insurance company liable for injuries to an innocent third person, even though the policy on the taxicab was effectively cancelled with the approval of the director of licenses two months prior to the accident, where it happened that the taxicab, notwithstanding such cancella-

tion, continued to operate without any insurance as required by law. Also see other authorities on this question assembled in 129 A. L. R. 851 (Annotation: "Compulsory Insurance: estoppel of indemnity or liability insurer to assert as against injured person cancellation of the policy that was effective as against insured."). The situation here is stronger than existed in the cases cited because here no notice of cancellation had even been given at the time the accident occurred so that the right of the injured person was absolute as against the appellant on that day.

CONCLUSION.

So far as can be ascertained, this question has not arisen before in the District of Columbia under the Act of June 29, 1938, but it is submitted that the clear intention of the Act required the conclusion reached by the lower Court that both insurance carriers were liable to the plaintiff and should contribute equally to the satisfaction of the appellee's judgment as both had legally effective Certificates of Insurance in full force when the liability to the plaintiff arose.

For the reasons above given, it is respectfully submitted that the judgment of the lower Court was correct and should be affirmed.

Respectfully submitted,

SAMUEL B. BROWN,
NATHAN M. BROWN,
BENJAMIN B. BROWN,
Attorneys for Appellee.

APPENDIX

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

No. 8317.

AMALGAMATED CASUALTY INSURANCE CO.,
A CORPORATION, *Appellant*,

v.

GENEVA WINSLOW, AN INFANT, BY MARGARET
WINSLOW, HER MOTHER AND NEXT FRIEND,
Appellee.

Appeal from the District Court of the United States for the
District of Columbia.

**REQUEST FOR ADMISSION OF FACTS UNDER
RULE 36.**

To:

Charles Pledger
Attorney for Pennsylvania Casualty Co.
National Metropolitan Bank Building
Washington, D. C.

Please take notice that the plaintiff requests the garnishee, Pennsylvania Casualty Co., to admit, for the purposes of this action only, the following facts, subject to all legal

objections to the admissibility which may be interposed at the trial:

1. That the garnishee, Pennsylvania Casualty Co., issued its policy of liability insurance to the defendant, Fred Elliott, on or about October 5, 1940.

2. That said policy of insurance was issued to the defendant under the provision of Title 44, Chapter 3, Section 1 (D. C. Code 1940 Ed.) and was in force on October 30, 1940.

3. That said Pennsylvania Casualty Company on or about October 5, 1940 filed a Certificate of Insurance pursuant to the requirements of the Public Utilities Commission which Certificate of Insurance is identified as Form P-3217, containing the following:

FRONT

Assured, Elliot, Fred, 425 M N. W.

Certificate of Insurance

To Public Utilities Commission of the District of Columbia

This is to certify that the assured mentioned above is insured under our policy No. 1236, in the form approved by the Superintendent of Insurance, covering public liability including personal injuries and death to passengers with limits of \$5,000 and \$10,000-\$20,000 (line out inapplicable amount), and property damage with limit of \$1,000, the said policy being effective from October 6, 1940, and covering the vehicle listed below. There is attached to the policy copy of endorsement printed on the reverse side of this certificate. The policy and endorsement will remain in full force and effect until canceled as provided in the said endorsement.

1940 Chev. Sedan Mtr. # 2915325 Ser. #14KH11-3268.

In the event of the cancellation of said policy by the insurance company for any reason, proper written notice shall be given to the Public Utilities Commission, and cancellation shall be effective in 20 or 5 days, as the case may be, from date of receipt of such notice at the office of the Commission.

Countersigned at Washington, D. C., this 5th day of October, 1940.

Pennsylvania Casualty Co.
Company

By A. C. Haas

Cancellation rec'd Feb. 2, 1942

(Sgd) Geo. W. Simons, Jr.

Note: All cancellation notices shall be on forms 4" by 6". Insurance Form No. 1.

BACK

ENDORSEMENT.

It is understood and agreed that this policy shall continue in force and effect until canceled by the company by giving 20 days (or 5 days when premium is not paid) written notice of its intention to do so, to the Public Utilities Commission of the District of Columbia.

Any and all conditions and/or provisions in said policy to the contrary notwithstanding, the liability of the company within the limits of liability stated in said policy shall, in contemplation of and in compliance with the provisions of 775-75th Congress. Chapter 809-3d Session, approved June 29, 1938, and/or Acts amendatory thereof, become and be absolute for damages adjudged against the insured on account of injuries to or death of persons or damage to or destruction of property resulting from said insured's ownership, maintenance or use of the motor vehicle or vehicles herein described, regardless of whether such motor vehicle or vehicles be owned wholly or in part by the insured.

The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim or suit, involving a breach of the terms of this policy, and for any payment the company would not have been obliged to make under the provisions of this policy except for the agreement contained in this endorsement.

This endorsement is attached to and forms a part of policy No. 1236.

Countersigned at Washington, D. C., this 5th day of October, 1940.

Pennsylvania Casualty Company

By A. C. Haas

P-3217

and that said Certificate of Insurance was on file with the Public Utilities Commission on or about October 30, 1940 and was executed by the Pennsylvania Casualty Company.

SAMUEL B. BROWN

Attorney for Plaintiff

514 Colorado Building

Washington, D. C.

This is to certify that a copy of the foregoing Request for Admission of Facts was mailed, postage prepaid to Charles Pledger, attorney for garnishee, Pennsylvania Casualty Co. this 12th day of March, 1942.

SAMUEL B. BROWN

Attorney for Plaintiff

514 Colorado Building

Washington, D. C.

**REQUEST FOR ADMISSION OF FACTS UNDER
RULE 36.**

To:

Albert Adams

Attorney for Amalgamated Casualty Insurance Co.

National Press Building

Washington, D. C.

Please take notice that the plaintiff requests the garnishee, Amalgamated Casualty Insurance Co., to admit, for the purposes of this action only, the following facts, subject to all legal objections to the admissibility which may be interposed at the trial:

1. That the garnishee, Amalgamated Casualty Insurance Co., issued its policy of liability insurance to the defendant, Fred Elliott, on or about June 17, 1940.

2. That said policy of insurance was issued to the defendant under the provision of Title 44, Chapter 3, Section 1 (D. C. Code 1940 Ed.) and was in force on October 30, 1940.

3. That said Amalgamated Casualty Insurance Co., on or about October 5, 1940 filed a Certificate of Insurance pursuant to the requirements of the Public Utilities Commission which Certificate of Insurance is identified as Form P-3217, containing the following:

FRONT

Assured, Elliott, Fred, 608 Third Street, N. E.
Wash. D. C.

Certificate of Insurance

To Public Utilities Commission of the District
of Columbia

This is to certify that the assured mentioned above is insured under our policy No. , in the form approved by the Superintendent of Insurance, covering public liability including personal injuries and death to passengers with limits of \$5,000 and \$10,000-\$20,000 (line out inapplicable amount), and property damage with limit of \$1,000, the said policy being effective from 12:01 AM 6.16.40, and covering the vehicle listed below. There is attached to the policy copy of endorsement printed on the reverse side of this certificate. The policy and endorsement will remain in full force and effect until canceled as provided in the said endorsement.

Rec'd 6/17/40 Pub. Ut. Com.

1940 Chevrolet Engine #2915385.

In the event of the cancellation of said policy by the insurance company for any reason, proper written notice shall be given to the Public Utilities Commission, and cancellation shall be effective in 20 or 5 days, as the case may be, from date of receipt of such notice at the office of the Commission.

Countersigned at Washington, D. C., this 15th day of June, 1940.

Amalgamated Casualty Company

By G. Pierce

Cancellation rec'd October 31, 1940.

Note: All cancellation notices shall be on forms 4" by 6". Insurance Form No. 1.

BACK

ENDORSEMENT.

It is understood and agreed that this policy shall continue in force and effect until canceled by the company by giving 20 days (or 5 days when premium is not paid) written notice of its intention to do so, to the Public Utilities Commission of the District of Columbia.

Any and all conditions and/or provisions in said policy to the contrary notwithstanding, the liability of the company within the limits of liability stated in said policy shall, in contemplation of and in compliance with the provisions of 775-75th Congress. Chapter 809-3d Session, approved June 29, 1938, and/or acts amendatory thereof, become and be absolute for damages adjudged against the insured on account of injuries to or death of persons or damage to or destruction of property resulting from said insured's ownership, maintenance or use of the motor vehicle or vehicles herein described, regardless of whether such motor vehicle or vehicles be owned wholly or in part by the insured.

The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim or suit, involving a breach of the terms of

this policy, and for any payment the company would not have been obliged to make under the provisions of this policy except for the agreement contained in this endorsement.

This endorsement is attached to and forms a part of policy No. 300. Countersigned at Washington, D. C. this 15 day of June, 1940.

Amalgamated Ins. Co.

By G. Pierce

P-3217

and that said Certificate of Insurance was on file with the Public Utilities Commission on or about October 30, 1940 and was executed by the Amalgamated Casualty Insurance Co.

SAMUEL B. BROWN

Attorney for Plaintiff

514 Colorado Building

Washington, D. C.

This is to certify that a copy of the foregoing request for Admission of Facts was mailed, postage prepaid to Albert Adams, attorney for Amalgamated Casualty Insurance Co., garnishee, this 12th day of March, 1942.

SAMUEL B. BROWN

Attorney for Plaintiff

514 Colorado Building

Washington, D. C.